IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

WRIT PETITION NO : 7469 of 1995

Between:

1 Kuruju Laxmi W/O Dharma raju
R/O Kinchili village, Adakula panchayat,Koyyuru Mandalam Visakhapatnam District.
2 Mukhi Peda laxmi, W/O Peda Demudu,
R/o Kincihili Village.
3 Mukhi Chinnyyamma, W/o Acchayya,
R/o Kinchili Village.
4 Bolem Demudamma, W/o Rambadu,
R/o Kinchili Village.
5 Mukhi Simhadri, W/o Demudu,
R/o Kincihili Village.
6 Pottika Rajulamma, W/o Swaminatha,
R/o Kincihili Village.
7 Mukhi Chinnayyamma, W/o Chinnyya,
R/o Kincihili Village.
8 Pottika Acchayyamma, W/o Narayanaswamy,
R/o Kinchili Village.
9 Bovem Devudamma, W/o Talupulu,
R/o Kinchili Village.
10 Kodukula Rajulamma, W/o Chukkarao,
R/o Kinchili Village.
11 Regam Ramulamma, W/o.Sriramulu,
R/o Kinchili Village.
12 Mukhi Rajulamma, W/o.Chinaram Babu,
R/o Kinchili Village.
13 Gulla Parvatamma, W/o.Bhogaraju,
R/o Kinchili Village.
14 Mukhi Laxmi, W/o.Peda rambabu,
R/o Kinchili Village.
15 Regam Chinnayyamma, W/o.Devudu,
R/o Kinchili Village.
16 Kuruju Chinnayyamma, W/o Swamulu,
R/o Kinchili Village.
17 Kuruju Bullamma, W/o Gaddi Dora,

R/o Kinchili Village.
18 Gulla Seetamma, W/o China Yerryya,
R/o Kinchili Village.
19 Gulla Parvatamma, W/o Malleswara Rao,
R/o Kinchili Village.
20 Pottika SubbaLaxmi, W/o Ammana Rao,
R/o Kinchili Village.
21 Mukhi Chilakamma, W/o Venkataramana,
R/o Kinchili Village.
22 Bolem Bogulamma, W/o Gangaraju,
R/o Kinchili Village.
23 Mukhi Lakshmi, W/o Bhushanam,
R/o Kinchili Village.
24 Jampa Polemma, W/o Chinnabbai,
R/o Kinchili Village.
25 Gulla China Bulli, W/o Acchiyya,
R/o Kinchili Village.
26 Mukhi Kannayyamma, W/o Gulla Yerramma,
R/o Kinchili Village.
27 Gulla Yerramma, W/o Ganga Raju,
R/o Kinchili Village.
28 Gulla Lakshmi, W/o Pedayerrayya,
R/o Kinchili Village.

..... PETITIONERS

AND

1 Agent to Government & Deputy Collector
Visakapatnam.
2 Agency Divisional Officer & Special Deputy Collector (Tribal Welfare)
Paderu, Visakhapatnam District.
3 Mandal Revenue Officer,
Koyyuru, Visakhapatnam District.
4 Chode Annapoornamma,
R/o Mandapet, East Godavari District.
5 Chode Veera Mohan Rao,
R/o Mandapet, East Godavari District.
6 Chode Satyanarayana Murthy,
R/o Mandapet, East Godavari District.
7 Chode Sreerama Murthy,
R/o Mandapet, East Godavari District.

.....RESPONDENTS

(Case against Respondents 4,6 and 7 is dismissed for default as per Court order dated 4.8.2004)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction more particularly one in the nature of Certiorari to quash the order passed by Agent to Government and Deputy Collector, Visakhapatnam made in A.S.No.1 of 94 dated 16/2/95 reversing the order of the 2nd

respondent in LTR No.1 of 94.

Counsel for the Petitioners: MR.T.DASARADHA RAMAIAH

Counsel for the Respondent Nos. 1 to 3 GP FOR SOCIAL WELFARE

Counsel for the Respondent No.6 : Mr. M.S. Ramachandrarao.

The Court made the following :

***ORAL ORDER*:**

Challenging the order dated 16.2.1995, passed by the first respondent herein, in A.S. No. 1 of 1994, reversing the order of the 2nd respondent in LTR No. 1 of 1994, the petitioners filed the present writ petition.

Petitioners assert that originally one Panthula Laxminarayana was the owner of the land in an extent of Ac.43.02 in six different survey numbers in Kinchili village hamlet of Adakula Panchayat, which is a tribal area in Koyyuru Mandal, Visakhapatnam District and that he died in the year 1957 leaving behind his wife and two daughters as his legal representatives. The respondents 4 to 7 herein had been in unauthorized possession of the said land. On verification of the records, it came to light that the vendors of the respondents have no right to alienate the said land in question. Then the 2nd respondent herein initiated proceedings in LTR No. 1 of 1994 on his file under Act 1 of 59, as amended by Act 1 of 70 and ordered for their eviction. Later the land was assigned to these petitioners on 10-2-1994 and pattas were also given in their favour. Since then the petitioners have been in possession of the said land. However, aggrieved by the order of the 2nd respondent, the respondents 4 to 7 herein preferred appeal No. 1 of 1994 before the 1st respondent. The 1st respondent passed an order of Status Quo on 5.3.1994 and ultimately allowed the appeal on grounds of Principle of *resjudicata* and accordingly set aside the

order of the 2nd respondent.

While admitting the writ petition, this Court granted interim suspension of the order impugned, in WPMP No. 9215 on 14.4.1995 and subsequently, the same was made absolute as per the orders in WVMP No. 2466 of 1995 dated 8.2.1996.

Heard the learned counsel for the petitioners and the learned Standing Counsel and also the learned counsel for the 6th respondent. Perused the material placed before me.

Learned counsel for the petitioners contends that the land in question was assigned to the petitioners in pursuance of the orders of the 2nd respondent herein and pattas were also granted in their favour. He further contends that the 2nd respondent herein had rightly rejected the salable right of the vendors of the respondents 4 to 7 and accordingly declared the sale deed that stood in favour of the respondents 4 to 7 void and had rightly assigned the land to the petitioners and as on today also the petitioners are in possession of the land.

On the other hand, learned counsel for the 6th respondent contended that the respondents 4 to 7 had been in possession of the land in question from 1957 to 1994, but the 2nd respondent had declared them as unauthorized possessors. In the appeal 1 of 1994, preferred by the respondents, the appellate authority had reversed the findings of the 2nd respondent holding that the vendor of the respondents had right to alienate the land in favour of the respondents. He further contended that the 2nd respondent ought not to have assigned the lands in favour of the petitioners on 10-2-1994 i.e. within 24 hours of the passing of the final order in LTR No. 1 of 1994.

However, as seen from the record, it can be observed that even though a mention was made in the affidavit that they were not parties before the appellate authority, the petitioners had obtained no leave to file the present writ petition. It can be further observed that in the

writ petition No. 3586 of 1994, filed by the 5th respondent, this Court vide order dated 4-3-1994 directed the authorities i.e. the official respondents herein not to dispossess the 5th respondent herein (petitioner therein) from the schedule land till the disposal of the appeal pending before the 1st respondent herein. At this stage, learned counsel for the 6th respondent submitted that as on the date of filing of the W.P. No. 3568 of 1994, the appeal was pending before the 1st respondent herein.

It is to be observed further that, the 2nd respondent passed order evicting the respondents on 9-2-1994 and he assigned the said land to the petitioners herein on 10-2-2994, which goes to show that without getting any approval or sanction from the higher authorities, the 2nd respondent assigned the lands to the petitioners in a hasty manner. But there is no material except the assertion made in the writ petition that the petitioners were put in possession of the land in question by virtue of the assignments made by the 2nd respondent. But it is also to be taken into consideration, at this stage, that the order of the 2nd respondent was carried in appeal to the 1st respondent and a status-quo order was made in respect of the dispossession of the respondents. More so, this Court in Writ Petition No. 3586 of 1994, preferred by the 5th respondent herein, ordered Status-quo till the passing of the final order in the A.S. 1 of 1994 preferred before the 1st respondent.

At this stage, the learned counsel for the petitioners contended that by virtue of amendment 1 of 1970 of the Act, the transaction between a tribal and a non-tribal has to be held invalid. In reply to that, the learned counsel for the 6th respondent vehemently contended that the Apex Court in *GADDAM NARASA REDDY vs. COLLECTOR, ADILABAD* held that the amendment Act 1 of 1970 is only a prospective and it has no retrospective effect. In view of the above settled proposition of law, and since the respondents had undisputedly been in possession of the land in question from 1957 to

1994, the contention of the learned counsel for the petitioners on this aspect cannot be countenanced since the alleged transaction took place in 1957 itself. Learned counsel for the 6th respondent, to substantiate his case, further relied on *DEPUTY COLLECTOR AND ANOTHER vs. VENKATA RAMANAIAH AND OTEHRS* wherein the Apex Court had also taken the same view that the amendment to the Act 1 of 1970 is a prospective only but not retrospective.

However, having regard to the fact that since the petitioners herein are not parties to the A.S. 1 of 1994 preferred by the respondents 4 to 7 before the 1st respondent herein, and since the petitioners have not obtained leave to file the present writ petition, no order can be passed in favour of the petitioners in this writ petition. More so, the factors whether the respondents 4 to 7 herein were in possession of the land in question from 1957 to 1994 and whether the petitioners were put in possession of the said land by following due procedure have to be decided on merits since they require sufficient documentary evidence. But this Court, under Art. 226 of the Constitution of India, cannot decide those issues in this writ petition.

In view of the foregoing discussion, it can be held that the impugned order needs no interference and accordingly, the writ petition is liable to be dismissed as devoid of merit.

In the result, the writ petition is dismissed. However, as requested by the learned counsel for the petitioners, leave and liberty is granted to the petitioners to file an appropriate application before the authorities concerned for assignment of any land other than the land in dispute. No costs. No costs.

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kvsn 03-02-2005

To

1 Agent to Government & Deputy Collector
Visakapatnam.

2 Agency Divisional Officer & Special Deputy Collector (Tribal Welfare)
Paderu, Visakhapatnam District.

3 Mandal Revenue Officer,
Koyyuru, Visakhapatnam District.

4. 2 CCs for G.P. for Social Welfare, High Court Buildings, Hyderabad.

5. 2 CD copies.